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C O N F I D E N T I A L SECTION 01 OF 02 MANILA 000864

SIPDIS

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TAGS: [PREL](#) [MARR](#) [KCRM](#) [CASC](#) [RP](#)
SUBJECT: PHILIPPINE COURT OF APPEALS ACQUITS U.S. MARINE

REF: MANILA 631 AND PREVIOUS

Classified By: Ambassador Kristie A. Kenney for reasons
1.4 (b) and (d).

11. (C) SUMMARY. More than two years after he was convicted of rape by a trial court in December 2006, the Philippine Court of Appeals has acquitted U.S. Marine Lance Corporal Daniel J. Smith, ending a three-year incident that has blighted an otherwise strong and productive bilateral relationship. Following his accuser's "recantation" March 17, the Appeals Court ruled in a unanimous 71-page decision issued April 23 that there was insufficient evidence to support Smith's conviction beyond a reasonable doubt. Immediately following the decision, LCpl Smith departed the Philippines in a military plane under the authority of U.S. Marine Corps personnel en route to Guam, where he will be processed according to military administrative procedures. While the decision ends the legal case against Smith and establishes his innocence, it will continue to have repercussions for the Visiting Forces Agreement (VFA), as there will be a public outcry -- every event related to the case has caused a furor -- and the Senate has scheduled hearings on the Agreement that will provide a forum for anti-American groups to vent their anger against the only alleged infraction they have been able to latch on to in the ten years since the VFA came into effect. Smith's acquittal comes as 6,000 U.S. forces participate in Balikatan exercises, an annual bilateral exercise that provides humanitarian assistance and promotes military readiness. The Mission and U.S. military commanders running Balikatan have alerted these forces to be ready for demonstrations and potential protests. Mission and Balikatan commanders are confident that Armed Forces of the Philippines security personnel will provide strong and capable protection for our forces. END SUMMARY.

PHILIPPINE APPEALS COURT REVERSES SMITH'S CONVICTION

12. (C) In a unanimous 71-page decision issued April 23, the Philippine Court of Appeals reversed the trial court decision, ruling that "on reasonable ground, the accused Lance Corporal Daniel Smith is hereby acquitted of the crime of rape as alleged . . . he is ordered released immediately unless held for other lawful case." Immediately following the issuance of the decision, LCpl Smith departed the Philippines in a military plane under the authority of U.S. Marine Corps personnel en route to Guam, where he will be processed according to military administrative procedures.

SAFEGUARDING THE VISITING FORCES AGREEMENT

13. (C) Lance Corporal Smith's freedom represents the culmination of a long and difficult political, judicial, and

diplomatic process in which the Mission strictly adhered to its responsibilities under the Visiting Forces Agreement (VFA) in an effort to preserve it and be able to conduct military operations that are fundamental to our strategic interests. Had the Mission failed to comply with VFA requirements, there is little doubt that the Philippine government would have faced overwhelming public and private pressure to abrogate the VFA, which provides the sole legal basis for our efforts to combat significant terrorist threats at their point of origin -- thousands of miles from U.S. shores.

14. (C) In spite of the fact that the USG has fully adhered to the VFA, and Smith is now legally absolved by the Philippine judicial system, the Philippine government will face strong pressure to renegotiate -- or even abrogate -- the Visiting Forces Agreement. The ever-contentious Chair of the Philippine Senate Foreign Relations Committee, Senator Miriam Santiago, has announced her intent to hold public hearings that will certainly feature vociferous condemnation of the presence of U.S. forces in the Philippines and angry calls by more than a dozen leftist organizations for the outright abrogation of the VFA. Those shrill voices will likely resonate more loudly than the voice of reason of two or three government agencies during the hearings. It is imperative that we recognize that more than a legal case, the accusation against LCpl Smith struck at the very heart of Philippine historical animus toward its colonial past and for the last three years no story -- not beheadings in Mindanao, not the sinking of ferries with scores of people on board, not corruption scandals involving large amounts of money -- matched the headlines in column inches devoted to the sordid

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details of a case that brought together an inebriated young Filipina and four U.S. marines.

CLARIFYING THE VISITING FORCES AGREEMENT

15. (C) The Smith case has demonstrated that the Visiting Forces Agreement requires clarification of the custody provisions. While we maintain the view that we retain custody until the conclusion of all judicial proceedings, the Philippine Supreme Court recently ruled that under the VFA the Philippine government takes custody of U.S. personnel immediately upon conviction, and ordered the Philippine government to negotiate without delay with the U.S. on placing Smith in a Philippine detention facility. The last three years have clearly shown that it is not a tenable situation for an accused military member to be kept in custody on grounds of the U.S. Chancery. The unusual situation of having a diplomatic facility as a place for detention should be clarified in future discussions with the Philippine government.

SECURITY MEASURES, PRESS STATEMENT

16. (C) Given the intense press and public attention the Smith case has engendered, Mission requested that the Philippine National Police increase its presence around the Embassy in case of demonstrations. Post is prepared for possible vocal demonstrations at or near the U.S. Embassy with related media coverage.

17. (C) The Mission intends to have a relatively low profile media stance, and will issue no press statements. Instead, the Mission will post the following statement on its website:

U.S. Embassy Statement - LCpl Daniel Smith Departure from Philippines

We have seen the decision of the Court of Appeals acquitting Daniel Smith and intend to respect that decision. Throughout this long and difficult case, Daniel Smith remained in

custody at the U.S. Embassy in the Philippines in compliance with the terms of the Visiting Forces Agreement, which provides the framework for U.S.-Philippine cooperation in legal cases involving visiting U.S. military personnel.

Following the decision of the Philippine Court of Appeals, Daniel Smith departed the Philippines under the authority of United States military officials.

This has been a difficult and emotional case for all involved, especially their families and loved ones. We hope that the parties can now move on with their lives.

KENNEY